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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No 459 · No. 460

CHARLES VAN BEECK, ADMINISTRATOR, ETC.,
PETITIONER,

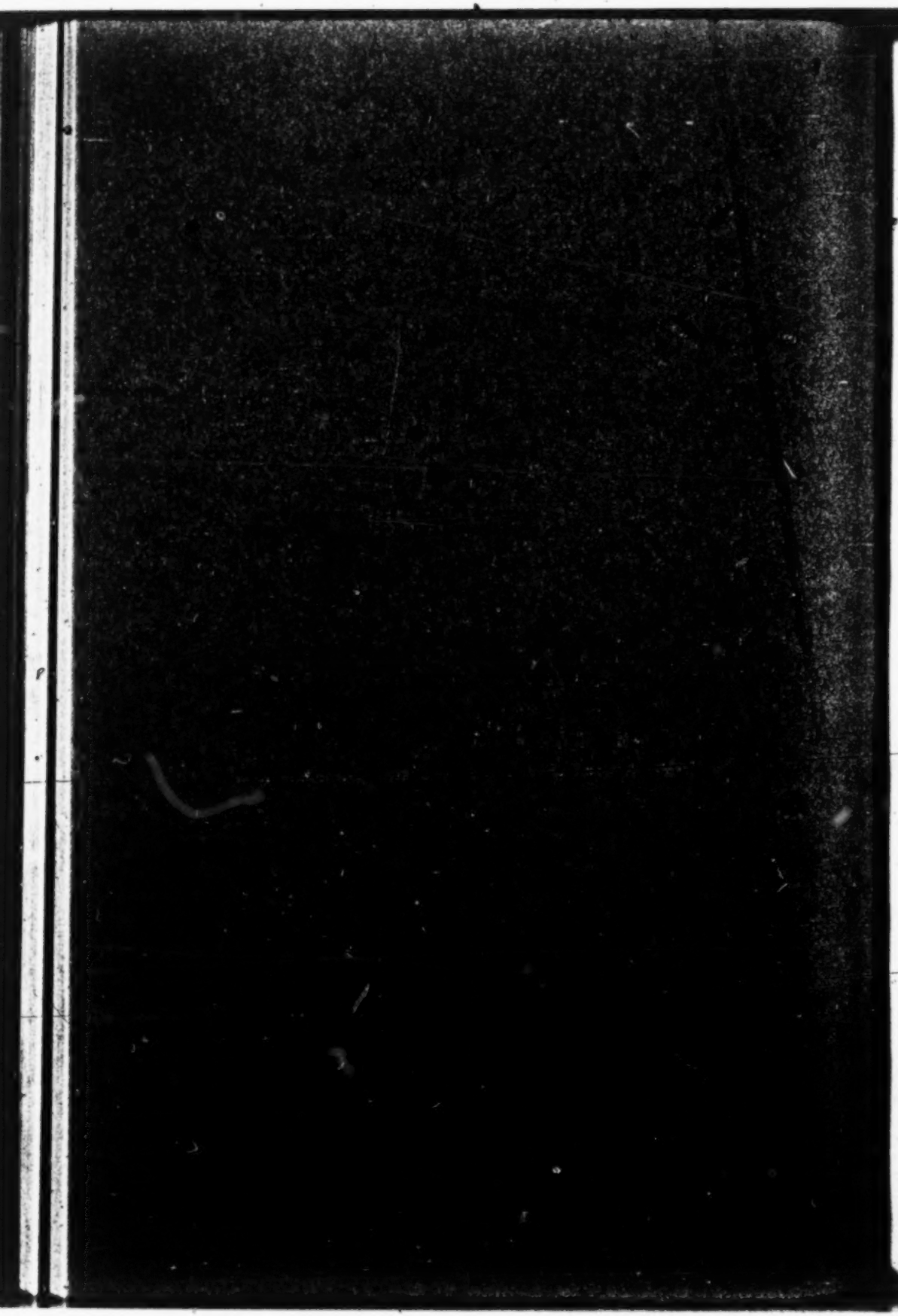
vs.

SABINE TOWING COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 12, 1936.

CERTIORARI GRANTED NOVEMBER 16, 1936.



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IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TEXAS

PETITION—LIBEL OF THE SABINE TOWING CO., INC.—Filed June 27, 1930

To the United States District Court, Eastern District of Texas, Beaumont Division:

The petition-libel of the Sabine Towing Company, Inc., owner of the recently lost ocean steam towboat "Edgar F. Coney", in a cause of exoneration from or limitation of liability, civil and maritime, alleges as follows:

First. That petitioner is a corporation created, organized and existing under the laws of the State of Texas, with its domicile and principal place of business in Port Arthur, in said state.

Second. That at and during all of the times on the voyage hereinafter particularly mentioned as well as prior and subsequent thereto, petitioner was the sole owner of the steam ocean towboat "Edgar F. Coney," of 153 gross tons, of the following approximate dimensions, to-wit: length over all 112 feet 3½ inches; breadth 20 feet 9 inches, depth from main deck at sides to top of keel 11 feet 6 inches. She was equipped with wireless with a competent operator on board. From the time of the construction of said towboat down to the time of her loss she was authorized to engage in and she was employed variously in towing services on inland, coastwise and ocean waters.

Third. That during the morning of January 27, 1930, the said steam towboat "Edgar F. Coney", then being tight, staunch, strong, properly manned, tackled, appareled and equipped, commenced a voyage bound from Smith's Bluff on Port Arthur Canal, Texas, with the bulk oil laden barge "Pure Detonox" in tow, to Pensacola, Florida, to there deliver her cargo, to proceed thence to Mobile to take on [fol. 3] another oil cargo for Tampa, Florida, and thence to return to Port Arthur, Texas. Said towboat, at the com-

mencement of said voyage was in a seaworthy condition, and was under the command of an experienced duly qualified master and other competent officers, with a full double crew in the service of said vessel, consisting, all told, of fourteen men; all of them competent for the services required of them on said vessel in their respective stations. A crew list of said tug is hereto attached and is hereby made a part hereof as if in detail set out herein, and for the purpose of identification herewith is marked "Petitioner's Exhibit A". During the afternoon said towboat anchored the barge in Sabine Pass, and on the next morning at about 7:05 o'clock the tug was again made fast alongside and continued on her voyage in this shape, and later on proceeded on a towline, in the usual customary manner.

Fourth. That at the time of the commencement of the aforesaid voyage the weather was such to indicate safe conditions as and where the said voyage was entered upon. There were then no present indications or advices that a dangerous condition of the weather and seas would be encountered during the said voyage. In due time said towboat and barge arrived out on the Gulf and all went well until in the afternoon of said day when the weather began to freshen and the sea to become unsettled. In time the barometer commenced to fall and the sea became rough, until, finally, both the towboat and barge were washed from stem to stern by the very heavy seas which were then running, with a heavy electrical and wind storm prevailing. Nevertheless, the Master, officers and crew of said towboat continued their towing of said barge, which was a seagoing whale-back bulk oil barge, until, finally, at about ten o'clock that night the lights on the towboat disappeared, and a little while later cries for help were heard on the said barge, from [fol. 4] the open waters off the barge, and everything possible to be done was done by those on the barge to render aid. The sea was running so high, with a heavy storm on, it was physically impossible to launch the lifeboat from the barge. The barge was brought to anchor and on the next morning only the upper part of the towboat's masts were standing above the water and no sign of life about. The towboat sunk in about forty-two feet of water. Petitioner made every reasonable search for men of the crew of said towboat without avail. Marine divers were employed and

taken to said wreck to examine it and secure whatever bodies, if any, could be found therein, and after making diving operations they reported they had not discovered any bodies in or about said sunken towboat. It is reported that five bodies were picked up at sea, and one on the beach, all with life-preservers on, from the said towboat; but nothing has been reported about the eight others, and petitioner has no further knowledge respecting anyone of them, whatever may have become of them.

Fifth. That whatever loss of life occurred among those who were of the officers and crew of said towboat, and whatever damage to property was occasioned, such loss of life and damage to property was done and incurred without fault on the part of petitioner; nor is petitioner a party or privy to whatever occurrence occasioned the loss of said vessel, nor did petitioner then or now or at any time have knowledge of the cause thereof, and petitioner avers upon the best of its knowledge, information and belief of its officers, that the loss of said towboat was occasioned by a peril of the sea.

Sixth. That proceedings have already been brought against petitioner for damages alleged to have been sustained by reason of the loss of the steam towboat "Edgar F. Coney", and alleged loss of life growing out of the loss of said towboat and other claims are threatened. The following suits have been brought against petitioner to re-[fol. 5] cover damages from petitioners on account alleged loss of life of certain members of the crew of said vessel, to-wit:

Ruth Anderson, administratrix of the estate of H. A. Anderson against Sabine Towing Company, filed May 31, 1930, No. 34,868, on the docket of the District Court of Jefferson County, 58th Judicial District of Texas, claiming	$30,000.00
Mrs. Ora Kenny, administratrix of the estate of John Hayden Kenny, her husband, against Sabine Towing Company, filed June 4, 1930, No. 34,890, on the docket of the District Court of Jefferson County, 58th Judicial District of Texas, claiming	70,000.00